



Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Tribunal case*

RENT RESTRICTION TRIBUNAL

- 3.1 *Assessment of rent.*
 - 3.2 *18 tenants to:*
 - 1st *respondent Lucy Waithera Musa and*
 - 2nd *respondent Promast Enterprise Agent.*
 - 3.3 *Assessment of rent made on 24th May 2012.*
 - 3.4 *Tenants asked to pay increased rent with effect from 1st July 2012.*
 - 3.5 *Tenant files appeal 5th June 2012.*
 - 3.6 *Tenants file application through authority given to appellant for stay of execution pending hearing of appeal dated 24th April 2007.*
4. *Application 24th April 2012*
 - 4.1 *The Rent Restriction Chairpeson made assessment of houses within the vicinity and reduced rent.*
 - 4.2 *The issue of the rent payable should be re-assessed.*
 - 4.3 *Pending the hearing of appeal, there be stay of*

execution.

5. *In reply:*

5.1 *The application is defective and wanting.*

5.2 *The matters refers concerns other parties not party to appeal.*

5.3 *The appellant/tenants not demonstrated application would be successful. No proceedings*

attached.

6. *Findings:*

i) *Application granted.*

ii) *There be stay of execution pending appeal.*

7. *Case Law:*

8. *Advocates :*

i) *Vincent Shimenga in person - appellant/tenant*

ii) *K.K. Kibathi instructed by Kimandu Gichohi & Co Advocates for respondent/landlord*

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Civil Appeal 278 of 2012

VINCENT SHIMENGA & 17 OTHERS

**..... APPELLANT/
TENANTS**

VERSUS

LUCY WAITHERA MUSA

**.....
RESPONDENT/
LANDLORD**

PROMAST ENTERPRISE AGENTS
2ND RESPONDENT/ ORIGINAL
RESPONDENT

(Being an appeal from the judgment and assessment of the Hillary K. Korir Chairperson, of Rent Restriction Tribunal delivered on 24th May 2012 in Nairobi)

RULING

Application of Stay of Execution

Pending Appeal

I. BACKGROUND

1. The applicant filed appeal with authority from 17 others. The applicants are tenants of the first respondent Lucy Waithera Musa together with the 2nd respondent Promast Enterprise Agent.
2. On 24th May 2012, as assessment of rent for their dwelling house was made by the chairman and member of the Rent Restriction Tribunal. The effect was to increase the rent.
3. Being dissatisfied, this appeal herein was filed (5th June 2012). But pending the appeal, the appellants filed an application dated

26th July 2012 duly awarded.

II APPLICATION DATED 26TH JULY 2012

4. The appellants argued that compared to others dwelling houses in the vicinity, the same Rent Restriction Tribunal had reduced the amount of rent to be paid. Those dwelling houses were superior and larger than the tin houses they were in.
5. The issue of rent payable should be re-examined in the appeal. But pending the hearing of the appeal there be stay of execution.
6. In reply, the application is said to be defective and wanting.
7. The matters referred to by the appellants referred to other parties not part of the appeal.
8. The respondent stated that the tenant did not demonstrate that they would be successful and as such their application be dismissed.
9. In an appeal before court from the Rent Restriction Tribunal, the issue herein would be assessment of rent. The perishable houses rooms in the vicinity would be taken into account in arriving at the assessment of rent.
10. The tenants have demonstrated the discrepancy between themselves and their neighbours where rents were assessed by the same tribunal. This is yet to be proved in the appeal. It was an application brought without delay.

11. I would hereby allow the application for stay of execution be and is hereby granted pending the hearing of the appeal.

12. The costs be in the appeal.

DATED THIS 17TH DAY OF JUNE 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates:

- i) *Vincent Shimenga in person - appellant/tenant*
- ii) *K.K. Kibathi instructed by Kimandu Gichohi & Co Advocates
for respondent/landlord*